

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-07
L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15
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R 101709Z JAN 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC 4655
INFO USMISSION USBERLIN
USMISSION USNATO
AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS

C O N F I D E N T I A L B O N N 0 0 4 6 6

E.O. 11652: GDS
TAGS: PGOV, AKB, BQG
SUBJECT: REFERRAL OF CASE FROM BERLIN COURT TO FRG
CONSTITUTIONAL COURT (FCC)

REFS: (A) USBER 3221
(B) BONN 21055 AND PREVIOUS

BEGIN SUMMARY: THE FRG HAS CONFIRMED IN THE BONN GROUP
THAT THE FCC HAS INDEFINITELY POSTPONED CONSIDERATION
OF THE CASE REFERRED TO IT BY THE BERLIN LANDESSOZIAL-
GERICHT. ASSURANCES WERE ALSO GIVEN THAT THE BONN
GROUP WOULD BE INFORMED IF THE FCC GAVE ANY INDICATION
THAT IT WAS PREPARING TO DEAL WITH THE BERLIN CASE
DIRECTLY. END SUMMARY

1. AT THE JANUARY 4 BONN GROUP MEETING, FRENCH REP
RICHARD SAID THAT HE HAD REPORTED TO PARIS THAT THE
FCC HAD POSTPONED CONSIDERATION OF THE BERLIN CASE IN
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THE EXPECTATION THAT A SIMILAR CASE BEFORE AN FRG
COURT COULD SETTLE THE QUESTION OF PRINCIPLE INVOLVED
WITHOUT MAKING NECESSARY AN FCC JUDGMENT ON THE BERLIN
CASE ITSELF (REF B). SPEAKING ON INSTRUCTIONS, HE
NOTED THAT THE CASE HAD CREATED CONSIDERABLE DIFFICULTIES
IN PARIS. PARIS WANTED TO BE REASSURED THAT THE FCC
WOULD NOT PRESENT THE ALLIES WITH A FAIT ACCOMPLI BY

RULING ON THE BERLIN CASE. HE ALSO ASKED THAT THE FRG INFORM THE ALLIES IN ADVANCE OF ANY POTENTIAL PROBLEMS RELATED TO BERLIN IN CONNECTION WITH THE CASE.

2. FRG REP VON BRAUNMUEHL REAFFIRMED THE INFORMATION HE HAD GIVEN THE BONN GROUP AT THE DECEMBER 20 MEETING. HE REPORTED THAT, IN THE LATEST DEVELOPMENT, THE MINISTRY OF LABOR HAD INFORMED THE FCC:

A) THAT THE THREE ALLIES HAD NOT YET TAKEN A POSITION ON THE REFERRAL OF THE BERLIN CASE TO THE FCC; AND

B) THAT THE STATE SOCIAL COURT IN DUSSELDORF WOULD SUBMIT A SIMILAR CASE IN JANUARY 1978 WHICH COULD PROVIDE THE BASIS FOR A DECISION BY THE FCC ON THE PRINCIPLE INVOLVED IN THE TWO CASES. UNDER THOSE CIRCUMSTANCES, HE SAID, THE FCC HAD AGREED TO AN INDEFINITE POSTPONEMENT OF THE DEADLINE FOR SUBMISSION OF THE FEDERAL GOVERNMENT'S OPINION TO THE FCC AND THUS, OF THE FCC'S CONSIDERATION OF THE CASE.

FINALLY, HE PROMISED TO KEEP THE BONN GROUP INFORMED ABOUT DEVELOPMENTS IN THE CASE, ESPECIALLY ABOUT ANY INDICATIONS THAT QUESTIONS DIRECTLY CONCERNING BERLIN MIGHT ARISE AGAIN.

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